



UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge Mark Nagumo
Telephone: (703) 308-9797
Facsimile: (703) 305-0942

Applicant: KROCZEK
Application No.: 09/509,283
Filed: 08/11/00
For: Anti-human T-cell costimulating polypeptide
monoclonal antibodies
Accorded benefit: PCT/DE98/02896, filed 09/23/98;
DE 19821060.4, filed 05/11/98

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,168.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).


MARK NAGUMO
Administrative Patent Judge

Filed by: Mark Nagumo
Administrative Patent Judge
Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 703-308-9797
Fax: 703-305-0942

Filed 19 December 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

RICHARD KROCZEK

Junior Party

(Applications 09/509,283, 09/823,307, and 09/972,524)¹,

v.

MAILED

DEC 19 2003

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

TAKUYA TAMATANI
and **KATSUNARI TEZUKA**
Senior Party

(Applications 09/383,551, 09/561,308, and 10/301,056)².

Patent Interference No. 105,168

NOTICE DECLARING INTERFERENCE

(37 CFR § 1.611)

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims

¹ 09/972,524 was filed 04 October 2001, as a continuation of 09/509,283; 09/823,307 was filed 02 April 2001, as a division of 09/509,283, which was filed 11 August 2000, under 35 U.S.C. § 371, based on PCT/DE98/02896, filed 23 September 1998, based on DE 19821060.4, filed 11 May 1998, and DE 19741929.1, filed 23 September 1997.

² 10/301,056 was filed 21 November 2002 as a division of 09/383,551; 09/561,308 was filed 28 April 2000, as a division of 09/383,551; 09/383,551 was filed 26 August 1999, as a continuation-in-part of PCT/JP98/00837, filed 27 February 1998, based on JPN 10/62217, filed 26 February 1998, and JPN 9/62290, filed 27 February 1997.

designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

Part B. Judge designated to handle the interference

Administrative Patent Judge Mark Nagumo has been designated to handle the interference. 37 CFR § 1.610(a).

Part C. Standing order

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

Part D. Conference call to set dates

A telephone conference call to set dates for taking action in the interference is scheduled for **2:00 p.m. on 2 March 2004** (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See STANDING ORDER ¶ 10.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE. Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. The parties involved in this interference are:

Junior Party

Named inventors: Richard Kroczek, Germany

Application: 09/509,283³
filed 11 August 2000

Title: Anti-human T-cell costimulating polypeptide monoclonal
antibodies

Application: 09/823,307⁴
filed 02 April 2001

Title: Methods of modulating T lymphocyte costimulation

Application: 09/972,524⁵
filed 04 October 2001

Title: Methods for treatment of asthmatic disorders

Assignee: Federal Republic of Germany, represented by the Director of the
Robert Koch Institute

Accorded Benefit: (i) PCT/DE98/02896, filed 23 September 1998
(ii) DE 19821060.4, filed 11 May 1998

Attorneys: See last page

Address: See last page

³ filed under 35 U.S.C. § 371, based on
PCT/DE98/02896, filed 23 September 1998, based on
DE 19821060.4, filed 11 May 1998, and based on
DE 19741929.1, filed 23 September 1997.

⁴ filed as a division of 09/509,283.

⁵ filed as a continuation of 09/509,283.

Senior Party

Named Inventors: Takuyu Tamatani, Japan
Katsunari Tezuka, Japan

Application: 09/383,551⁶
filed 26 August 1999

Title: Antibodies specific for a cell surface molecule mediating cell adhesion and signal transmission, cells secreting such antibodies, and methods of making and using such antibodies

Application: 09/561,308⁷
filed 28 April 2000

Title: Cell surface molecule mediating cell adhesion and signal transmission

Application: 10/301,056⁸
filed 21 November 2002

Title: Cell surface molecule mediating cell adhesion and signal transmission

Assignee: Japan Tobacco Inc.

Accorded Benefit: (i) PCT/JP98/00837, filed 27 February 1998
(ii) JPN 10/62217, filed 26 February 1998
(iii) JPN 9/62290, filed 27 February 1997

Attorneys: See last page
Address: See last page

⁶ application filed as a continuation-in-part of
PCT/JP98/00837, filed 27 February 1998, based on
JPN 10/62217, filed 26 February 1998, and
JPN 9/62290, filed 27 February 1997

⁷ filed as a division of 09/383,551.

⁸ filed as a division of 09/383,551.

Part F. Count and claims of the parties

Count 1

The method according to Claim 21 of Kroczek application 09/823,307

or

the method according to Claim 91 of Tamatani application 09/383,551.

The claims of the parties are:

Kroczek	09/972,524	53, 55–58
Kroczek	09/823,307	21, 25–28, 30, 32–35
Kroczek	09/509,283	71–76, 78–83, 85, 86, 88–148, 150–153
Tamatani	10/301,056	70–79
Tamatani	09/561,308	67–70, 75–77, 81–86, 90–97, 101–114, 117–130
Tamatani	09/383,551	37–114, 140–154, 165–214

The claims of the parties which correspond to Count 1 are:

Kroczek	09/972,524	53, 55–58
Kroczek	09/823,307	21, 25–28, 30, 32–35
Kroczek	09/509,283	71–76, 78–83, 85, 86, 88–98, 101–148, 150–153
Tamatani	10/301,056	70–79
Tamatani	09/561,308	67–70, 75, 76, 81–86, 92–97, 103–114, 119–130
Tamatani	09/383,551	37–114

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Kroczek	09/972,524	none
Kroczek	09/823,307	none
Kroczek	09/509,283	99, 100
Tamatani	10/301,056	none
Tamatani	09/561,308	77, 90, 91, 101, 102, 117, 118
Tamatani	09/383,551	140–154, 164–214

Part G. Heading to be used on papers

The following heading shall be used on papers filed in the interference. See STANDING ORDER ¶ 3.5.

Paper ⁹

Filed on behalf of [name of party]

By: Name of lead counsel

Name of backup counsel

Street address

City, State, and Zip-Code

Tel:

Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge Nagumo)

RICHARD KROCZEK
Junior Party
(Application 09/509,283, 09/823,307, and 09/972,524),

v.

TAKUYA TAMATANI
and KATSUNARI TEZUKA
Senior Party
(Application 09/383,551, 09/561,308 and 10/301,056).

Patent Interference No. 105,168

TITLE OF PAPER

⁹ Leave a blank line because the board assigns the paper number.

Part H. Summary of dates for taking action

Times for taking action are set out in the following sections of the STANDING ORDER:

- ¶ 4: date for identifying lead and backup counsel.
- ¶ 5: date for identifying any real party in interest.
- ¶ 6: date for requesting copies of involved and benefit applications and patents.
- ¶ 7: date for accomplishing certain discovery.
- ¶ 8: date for filing clean copy of claims.
- ¶ 9: date for filing clean copy of claims in cases with drawings or claims containing a means plus function limitation.
- ¶ 10: date for filing list of proposed preliminary motions.
- ¶ 13.10.2: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
- ¶ 14.1.1: date for objecting to admissibility of evidence.
- ¶ 14.2: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
- ¶ 14.3: dates when cross-examination can take place.
- ¶ 15.2: dates for taking action with respect to settlement discussions.

Part I. Order form for requesting file copies

FILE COPY REQUEST
Interference 105,168

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. _____
2. Complete address, including street, city, state, ZIP code and telephone number
(do not list a Post Office box because file copies are sent via commercial
overnight courier).

Telephone, including area code: _____

Part J. Signature of administrative patent judge



MARK NAGUMO
Administrative Patent Judge

Date: 19 Dec 2003

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference

Copy of claims of:

09/509,283, 09/823,307, and 09/972,524, and
09/383,551 and 09/561,308

Revised May 2003

cc (via overnight delivery):

Attorney for Kroczek:

(real party in interest: The Federal Republic of Germany, represented by the Director of the Robert Koch Institute)

Nickolaos C. George, Esq.
PENNIE AND EDMONDS LLC
1155 Avenue of the Americas
New York, NY 10036-2711

Address for overnight delivery:

Nickolaos C. George, Esq.
PENNIE AND EDMONDS LLC
1155 Avenue of the Americas
New York, NY 10036-2711

telephone: (212) 790-9090
facsimile: (212) 869-9741
e-mail: -----

Attorney for Tamatani

(real party in interest: Japan Tobacco Inc.)

Janis K. Fraser, Esq.
FISH & RICHARDSON PC
225 Franklin Street
Boston, MA 02110-2804

Address for overnight delivery:

Janis K. Fraser, Esq.
FISH & RICHARDSON PC
225 Franklin Street
Boston, MA 02110-2804

telephone: (617) 542-5070
facsimile: (617) 542-8906
e-mail: -----